

REMARKS

The present application was filed on December 7, 2000 with claims 1-20. In the outstanding Office Action, the Examiner rejected claims 1-20 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,446,136 to Pohlmann et al. (hereinafter "Pohlmann") in view of U.S. Patent No. 6,477,575 to Koeppel et al. (hereinafter "Koeppel").

In this response, Applicants traverse the §103(a) rejections of claims 1-20 based on at least the following reasons.

In the final Office Action, the Examiner contends that the previously submitted declaration was insufficient to predate the Koeppel reference. Applicants' attorney attempted to contact both Examiner Thanh Nguyen and Supervisory Examiner William Cuchlinski multiple times in order to determine what additional information was required to predate the Koeppel reference. However, both Examiners failed to return phone calls to Applicants' attorney and provided no assistance with this matter. Therefore, Applicants' attorney contacted Examiner Pinchus Laufer to discuss this insufficiency and the additional material required. Applicants have submitted this additional material in accordance with the discussion with Examiner Laufer.

The claims stand rejected under 35 U.S.C. §103(a) by reference to a combination of references comprising Koeppel. Without characterizing the Koeppel reference, Applicants resubmit herewith a Declaration of Prior Invention under 37 C.F.R. §1.131. The declaration and its associated exhibits evidence the conception of an invention falling within the scope of one or more of the claims of the present application at least as early as August 2000.

Applicants note that, despite diligent effort by Applicants' attorney, inventor David A. Rabenhorst could not be located in order to obtain his signature on the declaration. Mr. Rabenhorst is no longer employed by the assignee of the present invention, International Business Machines (IBM). Moreover, Mr. Rabenhorst's co-inventors and last-known manager while employed at IBM are not aware of his present employer or address.

In the final Office Action, the Examiner contends that the declaration is insufficient since it was not signed by all the inventors. Therefore, Applicants have submitted an additional Declaration of Prior Invention under 37 C.F.R. §1.131, which is executed by the assignee of the above-referenced

application, along with a Statement under 37 C.F.R. §3.73(b). As described in M.P.E.P. §715.04, an assignee may make an declaration under 37 C.F.R. §1.131 when it is not possible to produce the declaration of an inventor.

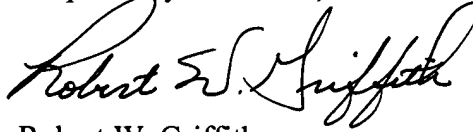
An attorney affidavit and corresponding exhibits have been submitted with this response to provide additional evidence of diligence. The critical period for diligence begins just prior to the effective date of Koeppel on September 12, 2000, and ends with the date of constructive reduction to practice for the invention on December 7, 2000. Thus, as asserted in the attorney affidavit, reasonable attorney diligence took place just prior to the effective date until the constructive reduction to practice. This reasonable diligence has been established since the attorney worked on a reasonable backlog of cases which were taken up in chronological order and carried out expeditiously before working reasonably hard on and completing a draft patent application for the present application during the continuous critical period. An attorney is not required to drop all other work and concentrate on the particular invention involved

Additionally, as asserted in the attorney affidavit, a draft patent application was sent to the inventors for review on November 27, 2000, followed by a revised draft patent application on December 4, 2000. Upon receiving approval of the revised draft application, the U.S. patent application was filed on December 7, 2000. Therefore, the attorney affidavit and corresponding exhibits provide sufficient evidence to establish diligence.

The inventor declaration, attorney affidavit and their corresponding exhibits evidence the conception of an invention falling within independent claims 1, 8 and 14 and one or more dependent claims, at least as early as August 2000, and thus prior to the September 12, 2000 effective date of Koeppel. The inventor declaration, attorney affidavit and their corresponding exhibits further evidence due diligence in the preparation of a patent application from prior to the September 12, 2000 effective date until the filing date of the U.S. patent application on December 7, 2000.

Applicants continue to submit that claims 1-20 are in condition for allowance. Withdrawal of the §103(a) rejection with respect to all claims is respectfully solicited.

Respectfully submitted,



Date: September 20, 2005

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Enclosures: Declaration of Prior Invention Under 37 C.F.R. §1.131 (Hellerstein, Ma)  
Declaration of Prior Invention Under 37 C.F.R. §1.131 (Anderson)  
Declaration of Prior Invention Exhibits  
Statement Under 37 C.F.R. §3.73(b)  
Letter of Authority  
Attorney Affidavit  
Attorney Affidavit Exhibits